

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA
FOR THE USE AND BENEFIT OF
LMC INDUSTRIAL CONTRACTORS, INC.,

Plaintiff,

-vs-

REPLY TO COUNTERCLAIMS

Civil Action No. 07 CV 2925

FKI LOGISTEX INTEGRATION INC. and
TRAVELERS CASUALTY AND SURETY
COMPANY OF AMERICA,

Defendants.

Plaintiff The United States of America f/u/b/o LMC Industrial Contractors, Inc. (“LMC”), by its attorneys, Harris Beach PLLC, as and for its Reply to Defendant FKI Logistex Integration Inc.’s (“FKI”) counterclaims, alleges as follows:

1. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph “48” of the Answer.
2. Admits, upon information and belief, the allegations contained in paragraphs “49” and “50” of the Answer.
3. Admits the allegations contained in paragraph “51” of the Answer.
4. As to the allegations contained in paragraphs “52”, “53” and “65” of the Answer, admits that LMC entered into a subcontract agreement (the “Subcontract”) with the Defendant FKI, wherein LMC agreed to perform certain labor and provide certain materials, including, but not limited to, mechanical field installation for the Airline Receiving Concourse and Tray Mail Takeway Transport Conveyor as set forth under the Subcontract, but respectfully refers the Court to the Subcontract for a statement of its terms, conditions and legal effect, and denies the remaining allegations contained within these paragraphs of the Answer.

5. As to the allegations contained within paragraph "54" of the Answer, admits that LMC performed extra work, at the express request of Defendant FKI for an amount exceeding \$2,300,000, and denies the remaining allegations contained within this paragraph of the Answer.

6. Denies the allegations contained in paragraph "55", "56", "57", "58", "61", "62", "63", "66", "67", "68", "69" and "70" of the Answer.

7. As to the allegations contained within paragraph "59" of the Answer, admits that Defendant FKI is entitled to a Subcontract credit in the amount of \$53,280 for the F-13 and TFC1-9 and associated lines of work that were removed from Defendant FKI's scope of work by the USPS, and denies the remaining allegations contained with this paragraph of the Answer.

8. As to the allegations contained within paragraph "60" of the Answer, admits that Defendant FKI is entitled to a Subcontract credit in the amount of \$68,552 as LMC did not obtain a payment and performance bond for the Project, and denies the remaining allegations contained within this paragraph of the Answer.

9. As to the allegations contained in paragraph "64" of the Answer, repeats and realleges its responses to said paragraphs as if fully set forth herein.

10. Denies each and every allegation contained within Defendant FKI's counterclaims not heretofore specifically admitted, denied or otherwise controverted.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

11. Defendant FKI's counterclaims are barred, in whole or in part, by reason of Defendant FKI's breach and/or repudiation of any and all applicable contracts and/or agreements.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

12. Defendant FKI's counterclaims are barred, in whole or in part, by reason of documentary evidence.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

13. Defendant FKI's counterclaims are barred, in whole or in part, by reason of the doctrine of unclean hands.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

14. Defendant FKI's counterclaims are barred, in whole or in part, by reason of Defendant FKI's failure to mitigate its damages.

WHEREFORE, Plaintiff LMC Industrial Contractors, Inc. respectfully respects judgment granting the relief requested in its Complaint and denying the relief requested by Defendant FKI Logistex Integration Inc. in its Answer, together with the attorneys' fees, interest, costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated: June 25, 2007

Yours, etc.,

HARRIS BEACH PLLC

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